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## THE DESIGNER OF THE CONSTITUTION OF THE UNITED STATES.

BY HANNIS TAYLOR.

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IN a recent issue of the Chicago "Record-Herald," Mr. William E. Curtis, after looking over the antiquities of Hartford, presented an interesting sketch of Noah Webster, in which he said, among other things, that "his most notable lecture was entitled 'Sketches of American Policy,' and it was published later in pamphlet form. It contains the first definite proposition for a constitution of the United States, as a substitute for the Articles of Confederation, which he criticised in his lecture as imperfect and insufficient." In that hopelessly indefensible statement Mr. Curtis has embodied a too popular misunderstanding of a vital fact of American constitutional history, in regard to which there should not be the slightest doubt or obscurity. Noah Webster has no claim whatever to the honor attributed to him. It belongs to Pelatiah Webster, who was the original designer or architect of the present Constitution of the United States. He it was who first proposed in a public way the calling of the Convention in which the present Constitution was made; he it was who presented, in thirty compactly printed pages, the first outline of the plan upon which it was formed; he it was who gave to the world the path-breaking idea of a Federal Government operating directly upon the citizen and not upon the States as corporations. To him alone belongs the title of "Father of the Constitution," a title resting upon written documents accessible to every one. And yet, in the face of such evidence, his very name is known only to a handful of his fellow countrymen; no monument has ever been raised to his memory; few encyclopædias mention him at all, and such as do pass him by in a way that indicates an utter lack of comprehension of his real importance.

Noah Webster's essay, referred to by Mr. Curtis as containing "the first definite proposition for a constitution of the United States, as a substitute for the Articles of Confederation," was published at Hartford in 1785. On February 16th, 1783, Pelatiah Webster had published at Philadelphia his epoch-making tract entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America," in which he advocated, not only the creation of a supreme Federal Government, with a national assembly of two chambers instead of one, with power to enact laws and to enforce them on individuals as well as on States, but also the creation of permanent courts of law and equity, and a stricter organization of the executive power. Noah Webster's essay was simply a warming over, an elaboration, of the great work which the path-breaker had done nearly two years before. As a founder of the existing Constitution, Pelatiah Webster stands second to Washington alone. When the originality and the far-reaching consequences of his contributions are considered, they surpass by far those of any man who sat in the Federal Convention of 1787, a body which simply worked out the plan he had drawn. While devising that plan he was so impressed with the magnitude of his task that he exclaimed, "May almighty wisdom direct my pen in this arduous discussion!" Some years after the work of the Convention was over, he calmly contrasted the result with his plan, published four years before it met, in the following terms:

"At the time when this Dissertation was written [February 16th, 1783], the defects and insufficiency of the Old Federal Constitution were universally felt and acknowledged; it was manifest, not only that the internal police, justice, security and peace of the States could never be preserved under it, but the finances and public credit would necessarily become so embarrassed, precarious and void of support, that no public movement, which depended on the revenue, could be managed with any effectual certainty: but though the public mind was under full conviction of all these mischiefs, and was contemplating a remedy, *yet the public ideas were not at all concentrated, much less arranged into any new system or form of government, which would obviate these evils.* Under these circumstances, I offered this Dissertation to the public: how far the principles of it were adopted or rejected in the New Constitution, which was four years afterwards [September 17th, 1787] formed by the General Convention, and since ratified by the States, is obvious to every one."\*

\* The foregoing is a note appended by Pelatiah Webster to his plan of 1783, when it was republished at Philadelphia in 1791. See p. 228.

Pelatiah Webster perfectly understood his own case and stated it with lucid simplicity. He said: Here is the plan of a federal constitution I published four years before the Convention of 1787 met; here is the federal constitution that body made; contrast the two, and the truth "is obvious to every one." There is nothing so marvellous, so unaccountable, in our history as the failure of the American people to do justice to the man who contributed the one basic idea which made our existing Federal Constitution possible. The writer fondly hopes that his humble presentation of Pelatiah Webster's case may at least make his name a little more familiar to his fellow countrymen.

Pelatiah Webster, who was born at Lebanon, Connecticut, in 1725, died at Philadelphia in 1795. After graduating at Yale in 1746, he studied theology and preached in Greenwich, Massachusetts, in the winter of 1748-9. In 1755 he removed to Philadelphia, where he became a prosperous merchant, and in due time an ardent supporter of the patriot cause in the War of the Revolution, aiding with pen and purse.\* The former was first devoted to the subject of finance. As early as October, 1776, he began to write on the currency, and in 1779 he commenced the publication at Philadelphia of a series of "Essays on Free Trade and Finance." In one of these he made the first public call for a general convention, to be armed with power to devise an adequate system of federal government. The following account of that performance is taken from the writings of Madison:

"A resort to a General Convention to remodel the Confederacy was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting and foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May, '81, at the seat of Congs, Pelatiah Webster, an able tho' not conspicuous citizen, after discussing the fiscal system of the U. States, and suggesting among other remedial provisions, including national Bank, remarks that 'the Authority of Congs, at present, is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging and limiting the duties and powers of their constitution, . . . In 1785, Noah Webster whose pol. and other valuable writings had made him known to the public, in one of his publications of American policy, brought into view *the same resort* for supplying the defects Fedl System."†

\* He was captured by the British and imprisoned for over four months.

† "Writings of James Madison," 1783-1787, vol. II., pp. 401-3.

Madison thus makes it plain that he considered Noah Webster's essay simply as a repetition by a second-hand thinker. It is beyond question that Pelatiah Webster, in his financial essay of 1781, made the first public call\* for a convention to create an adequate system of federal government. That honor is, however, comparatively a small one. His right to immortality rests upon the fact that, in his paper published in 1783, he drew the outlines of the unique fabric created at Philadelphia in 1787, basing it, as he did, upon the epoch-making idea that a federal government should operate directly upon the citizen and not upon the States as corporations. That was Pelatiah Webster's personal contribution to the science of federal government, for which the world had been waiting for more than two thousand years. In a note prepared in 1791, heretofore quoted, he tells us that, when he drew his plan in 1783, "the public mind was under full conviction of all these mischiefs, and was contemplating a remedy, yet the public ideas were not at all concentrated, much less arranged into any new system or form of government." The outlines of the "new system" came from his brain like a bolt from the blue.

From the days of the Greek Leagues down to the making of the present Constitution of the United States, all federal governments had been constructed upon a single plan, at once clumsy and inefficient. The most perfect of the Greek Leagues was the Achaian, of which the founders really knew nothing, as we learn from that writer in the "Federalist" who tells us that, "could the interior structure and regular operation of the Achaian League be ascertained, it is probable that more light might be thrown by it on the science of federal government than by any of the like experiments with which we are acquainted."†

The only federal governments with whose internal organizations the builders of our Federal Republic were really familiar, and whose histories had any practical effect upon their work, were those which had grown up between the Low-Dutch communities at the mouth of the Rhine and the High-Dutch communities

\* The fact that "Alexander Hamilton made the same suggestion in a private letter to James Duane, September 3, 1780," is of no importance. It was not a public act, not even a public declaration. See Gaillard Hunt's "Life of James Madison," p. 108.

† "Federalist," XVIII. Such knowledge as the framers did possess of Greek federalism seems to have been drawn chiefly from the work of the Abbé Mably, "*Observations sur l'Histoire de Grèce*."

in the mountains of Switzerland and upon the plains of Germany.\* Down to the making of our present Federal Constitution, the Confederation of Swiss Cantons, the United Provinces of the Netherlands, and the German Confederation, really represented the total advance made by the modern world in the structure of federal governments. Such advance was embodied in the idea of a federal system made up of a union of states, cities, or districts, representatives from which composed a single federal assembly whose supreme power could be brought to bear, not upon individual citizens, but upon cities or states as such. The basic principle upon which all such fabrics rested was the requisition system, under which the federal head was simply endowed with the power to make requisitions for men and money upon the states or cities composing the league for federal purposes; while the states alone, in their corporate capacity, possessed the power to execute and enforce them. The first advance made by the English colonies in America in the path of federal union ended with the making of our first federal constitution, embodied in what is known as the Articles of Confederation. Up to that point, nothing new had been achieved; the fruit of the first effort was simply a confederation on the old plan, with the federal power vested in a single assembly that could only deal through the requisition system with the states as states. As one of the financial advisers of the Continental Congress during the war, the mightiest of all the Websters clearly perceived that no system of credit could be constructed without the national power of coercive taxation. He therefore sounded the key-note when, in his famous paper of 1783, he declared:

“They [the supreme power] *must therefore of necessity be vested with a power of taxation.*† I know this is a most important and weighty truth, a dreadful engine of oppression, tyranny and injury, when ill used; yet, from *the necessity of the case*, it must be admitted. For to give a supreme authority a power of making contracts, without any power of payment—of appointing officers, civil and military, without money to pay them—a power to build ships, without any money to do it with—a power of emitting money, without any power to redeem it—or of borrowing money, without any power to make payment, etc.,—

\* “Federalist,” XIX., XX.

† The ancient system of requisitions, resting on the taxing power of the states, was to be superseded by a system of national taxation extending to every citizen, directly or indirectly. He thus proposed a scheme of federal taxation entirely new to the world.

such solecisms in government are so nugatory and absurd that I really think to offer further arguments on the subject would be to insult the understanding of my readers. To make all these payments dependent on the votes of thirteen popular assemblies, who will undertake to judge of the propriety of every contract and every occasion of money, and grant or withhold supplies according to their opinion, whilst at the same time the operations of the whole may be stopped by the vote of a single one of them, is absurd."

In the place of the lifeless federal system of absurdity embodied in the Articles of Confederation, Pelatiah Webster proposed to substitute a self-executing and self-sustaining national system, based on the following propositions, stated in his own language:

"The supreme authority of any state must have power enough to effect the ends of its appointment, otherwise these ends cannot be answered and effectually secured. . . . I begin with my first and great principle, viz., *That the constitution must vest powers in every department sufficient to secure and make effectual the ends of it.* The supreme authority must have the power of making war and peace—of appointing armies and navies—of appointing officers both civil and military—of making contracts—of emitting, coining and borrowing money—of regulating trade—of making treaties with foreign powers—of establishing post-offices—and in short of doing everything which the well-being of the Commonwealth may require, and which is not compatible to any particular state, all of which require money, and cannot possibly be made effectual without it. . . . *This tax can be laid by the supreme authority much more conveniently than by the particular assemblies,* and would in no case be subject to their repeals or modifications; and of course the public credit would never be dependent on, or liable to bankruptcy by, the humors of any particular assembly. . . . The delegates which are to form that august body, which are to hold and exercise the supreme authority, ought to be appointed by the states in any manner they please."

After describing the qualifications of members of Congress, he proceeds to define a part of the original jurisdiction of the Supreme Court of the United States by saying "that the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States." Then comes the climax:

"The supreme authority ought to have a power of peace and war, and forming treaties and alliances with all foreign powers; which implies a necessity of their also having sufficient powers to enforce the obedience of all subjects of the United States to such treaties and

*alliances* with full powers to unite the force of the States, and direct its operations in war; and to punish all transgressors in all these respects; otherwise, by the imprudence of a few, the whole Commonwealth may be embroiled with foreign powers, and the operations of the war may be rendered useless. . . . I think the soul that sins should die, *i.e.*, the censure of the great supreme power ought to be so directed, if possible, as to light on those persons who have betrayed their country, and exposed it to dissolution, by opposing and rejecting the supreme authority, which is the bond of our union, and from whence proceeds the principal strength and energy of our government. I therefore propose that every person whatever, whether in public or private character, who shall, by public vote or other overt act, disobey the supreme authority, shall be amenable to Congress, shall be summoned and compelled to appear before Congress and, on due conviction, suffer such fine, imprisonment, or other punishment, as the supreme authority shall judge requisite."

Here at last we have the great thought of which neither Thucydides nor Polybius ever dreamed—the thought of a supreme federal government acting directly upon the subject or citizen, and not upon the cities or states composing the league. About this path-breaking idea (*bahnbrechende Idee*) there does not hang the perfume either of the spelling-book or the lexicon. It is living, seed-full fruit—Pallas from the brain of Zeus. In formulating his conclusions as to the supremacy of federal law acting directly on all citizens, he said:

" 1. No laws of any state whatever, which do not carry in them a force which extends to their effectual and final execution, can afford a certain or sufficient security to the subject: this is too plain to need any proof. 2. Laws or ordinances of any kind (especially of august bodies of high dignity and consequence) which fail of execution, are much worse than none; they weaken the government; expose it to contempt. A government which is but half executed, or whose operations may all be stopped by a single vote, is the most dangerous of all institutions. I take it that the very existence and use of our union effectually depends on the full energy and final effect of the laws made to support it; and therefore I sacrifice all other considerations to this energy and effect, and if our union is not worth this purchase we must give it up."

Around that fundamental concept all lesser things cluster. Such a national government as Webster planned must of necessity be strictly organized. He therefore proposed:

" That the Congress shall consist of two chambers, an upper and lower house, senate and commons, with the concurrence of both necessary to

every act; and that every state send one or more delegates to each house: this will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject, and of equal authority in the decision."

After thus proposing a federal assembly on the English bicameral plan, which was adopted by the Convention, he proceeded to outline the executive and judicial departments as follows:

"These ministers will of course have the best information, and most perfect knowledge, of the state of the Nation, as far as it relates to their several departments, and will of course be able to give the best information to Congress, in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole. The Financier manages the whole subject of revenues and expenditures—the Secretary of State takes knowledge of the general policy and internal government—the Minister of War presides in the whole business of war and defence—and the Minister of Foreign Affairs regards the whole state of the nation, as it stands related to, or connected with, all foreign powers. To these I should add judges of law and chancery. I would further propose that the aforesaid great ministers of state shall compose a Council of State, to whose number Congress may add three others, viz., one from New England, one from the Middle States and one from the Southern States, one of which to be appointed President by Congress."

His pet hobby seems to have been to create a Department of Commerce in close touch with Congress.

"I therefore humbly propose, if the merchants in the several states are disposed to send delegates from their body to meet and attend the sitting of Congress, that they shall be permitted to form a chamber of commerce, and their advice to Congress be demanded and admitted concerning all bills before Congress, as far as the same may affect the trade of the states."

The recent creation of a Department of Commerce and Labor has at last effectuated that idea. Webster's plan was a complete symmetrical whole, and of it he said in conclusion:

"This vast subject lies with mighty weight on my mind, and I have bestowed on it my utmost attention, and here offer the public the best thoughts and sentiments I am master of. I shall have all the reward I wish or expect, if my dissertation shall throw any light on the great subject, shall excite an emulation of inquiry, and animate some abler genius to form a plan of greater perfection, less objectionable, and more useful."

The "abler genius" did not come; he was not needed; the original architect had outlined the general plan; modifications and improvements only were necessary. The most important subsequent suggestion came from Jefferson, who in a letter to Madison, written from Paris, December 16th, 1786, used this language:

"To make us one nation, as to foreign concerns, and keep us distinct in domestic ones, gives the outline of the proper division of powers between the general and particular governments. But to enable the federal head to exercise the powers given to best advantage, it should be organized as the particular ones are into legislative, executive, and judiciary."\*

As an assistant architect, Jefferson gave more distinctness to Webster's plan at a vital point. It thus appears that the architects of our present Federal Constitution, who never sat in the Convention of 1787, completed the plan before it met. Mighty as were the members of that body, they were only master builders who worked within the lines of a carefully prepared plan—they were not architects.

When the final analysis is made, it appears that our career as a nation has so far given birth to only three basic political ideas, which may be considered as original contributions to the Science of Politics:

(1) Constitutional Limitations on legislative power, a state creation, from which resulted the power of courts to declare legislative acts null and void. The ultimate outcome of that invention, which has no personal author, was the Supreme Court of the United States, the only court in history ever armed with the power to pass on the validity of a national law.

(2) Interstate citizenship, an invention without a personal author, which originated in the Articles of Confederation. That principle infused itself into the constitution neither of the old German Empire, nor of Switzerland, nor of Holland. From the Articles of Confederation it passed into section two of article four of the present Constitution, which provides that: "The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States." The consummation is embodied in the first section of the Fourteenth Amendment, which has no personal author, declaring that: "All persons

\* See "Jefferson's Correspondence," by T. J. Randolph, vol. ii, pp. 64, 65.

born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

(3) The idea of a supreme federal government, strictly organized, and operating directly on the citizen, and not on the States composing the federation, was the invention, without doubt or cavil, of Pelatiah Webster, a native of Connecticut, an adopted son of Pennsylvania, and a graduate of the University of Yale. Has any one of those great communities ever produced in any other person so great a son? His grandeur is equalled only by the neglect of his fellow countrymen. In *McCulloch vs. Maryland*, Chief Justice Marshall said:

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

Pelatiah Webster drew the "great outlines" of our Federal Constitution; he set up the framework of governmental timbers, leaving the inner construction to be completed by the members of the Federal Convention of 1787, and by the power of defining the law vested in the Supreme Court of the United States. Marshall's reward for his part of the work is world-wide fame and an imposing monument at the door of the Capitol. And yet without Pelatiah Webster John Marshall's work would have been impossible. He simply gave vitality, through the judicial power, to the new national fabric which Webster had evolved.

Not long ago, the good people of Philadelphia, ever proud of their worthies, took, with pomp and circumstance, all that was mortal of James Wilson from his lonely grave at Edenton, North Carolina, and gave him tardy sepulchre near the scene of his triumphs; while, by a brilliant pen, he was presented to the world as "a nation-builder." Great, prophetic, patriotic, cultured, as James Wilson really was, how small his achievements really are when contrasted with those of the real founder, the real "nation-builder." The day cannot be far distant when fair and impartial

criticism must award to Pelatiah Webster his place, so long withheld, as the original designer of our Federal Constitution, made in the Convention he was the first to propose. His fame rests upon clear documentary evidence, which neither envy, nor malice, nor injustice, nor indifference can always ignore. His original and complete plan of the existing Federal Constitution is embodied in the thirty compactly printed pages of the epoch-making paper of February 16th, 1783, whose form is as good as its substance. Like the great Papinian, he was as lucid as a Greek and as terse as a Roman. Political philosopher, financier, patriot, man of affairs, he possessed every qualification for his great task, which he executed in a state of mental exaltation that seems to have been almost supernormal. In both of the scanty and stingy biographical notices of him in the leading American encyclopædias, the statement is made that his plan "is mentioned by James Madison as having an influence in directing the public mind to the necessity of a better form of government." Bancroft, in his "History of the Constitution,"\* states, in his cold, colorless way, that:

"The public mind was ripening for a transition from a confederation to a real government. Just at this time Pelatiah Webster, a graduate of Yale College, in a dissertation published at Philadelphia, proposed for the legislature of the United States a congress of two houses which should have ample authority for making laws 'of general necessity and utility,' and enforcing them *as well on individuals as on states*. He further suggested not only heads of executive departments, but judges of law and equity."

While the great invention of a federal government acting directly on the citizen, for which the world had been waiting for more than two thousand years, is thus languidly admitted, it wins less acclaim from this arctic historian than would be awarded to-day to the inventor of a non-explosive tire for an automobile. The great and acute author of "The American Commonwealth," who seldom overlooks anything, gives no sign that he has ever heard even the name of the original designer of the Constitution of the United States. For this marvellous and cruel neglect of such a man, by a patriotic people ever handy with monuments, only one explanation can be given. When the Convention of 1787 adjourned, its members seem to have been overcome at the

\* Vol. i, p. 86.

close by the grandeur of an achievement they assumed to be all their own. When the masses of the people had the opportunity to examine its provisions, and to feel the practical benefits which it wrought in their political condition, they too became imbued with a spirit of intense admiration; they put it upon a pedestal and made it a popular idol; as a German historian has expressed it, the new Constitution soon passed through a process of canonization. In that way the idea crystallized that the new idol was manufactured, out and out, in a convention of demigods who sat only four months and three days. That purely fanciful notion is fast giving way before the Historical Method, which looks behind written constitutions in order to ascertain the genesis of the ideas that entered into them. When scrutinized by students of that school, who believe that beneath every shell there is an animal, behind every document there is a man, Pelatiah Webster's claim to the personal authorship of the scheme of federal government embodied in the Constitution of the United States presents no difficulties whatever. According to all legitimate canons of criticism, his claim to the authorship of that plan, severed from details and considered as a connected whole, is as clear as Jefferson's to the authorship of the Declaration of Independence. Let us hope that the day is near at hand when the claim of the New England patriot and philosopher will be frankly admitted, and an imposing monument erected on some lonely eminence near the Capitol at Washington to the original designer of the unique plan of federal government embodied in the Constitution of the United States.

HANNIS TAYLOR.